

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**EXXONMOBIL OIL CORPORATION  
(F/K/A MOBIL CORPORATION),**

**Plaintiff,**

**V.**

**AIG SPECIALTY INSURANCE  
COMPANY (F/K/A AMERICAN  
INTERNATIONAL SPECIALTY LINES  
INSURANCE CO.),**

**Defendant.**

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**CIVIL ACTION NO. 3:22-CV-1873-B**

**Hon. Jane J. Boyle**

**DEFENDANT’S SUR-REPLY IN OPPOSITION TO PLAINTIFF’S  
MOTION TO REMAND TO STATE COURT**

**GRAY REED**

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**SPECIALTY LINES INSURANCE CO.)**

Defendant AISLIC<sup>1</sup> submits this Sur-Reply in Opposition to Plaintiff's Motion to Remand to State Court and respectfully shows the Court as follows:

**ARGUMENT**

As AISLIC explained in its Response to Plaintiff's Motion to Remand, AISLIC filed a Petition to Compel Arbitration in the Supreme Court of the State of New York on August 23, 2022, which sought to compel arbitration of all coverage issues related to the underlying benzene claims under the subject insurance policies, including the retention dispute that Plaintiff raises in this declaratory judgment action.<sup>2</sup>

On October 14, 2022 the New York court issued an order compelling arbitration ("New York Order"), which EMOC attached and relied on in its October 21, 2022 Reply in Support of its Motion to Remand.<sup>3</sup> The arbitration demand addressed in the New York Order commenced arbitration concerning all issues arising out of insurance coverage for benzene claims under the AISLIC policies, and expressly included the retention issue that EMOC raised in the instant matter. The arbitration demand encompassed the claims of Mobil as well as the claims of any other insureds under the AISLIC policies who allege that they are entitled to coverage for the benzene claims. In response to the arbitration demand, both Mobil and EMOC consented to arbitration, subject to their objection concerning the inclusion of the retention issue.<sup>4</sup> Because the New York Order compelled Mobil to arbitrate in accordance with the arbitration demand, and because EMOC has voluntarily consented to participate in the arbitration, the retention issue is now squarely subject to the New York arbitration ordered to proceed by the New York Order.

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<sup>1</sup> Unless stated otherwise, defined terms in this sur-reply have the same definitions provided in AISLIC's Response to Plaintiff's Motion to Remand.

<sup>2</sup> See Dkt. No. 10, p.2, n.2.

<sup>3</sup> See Dkt. No. 15-2, Ex. 2-A to Plaintiff's Reply in Support of its Motion to Remand.

<sup>4</sup> See Dkt. No. 15-2, Ex. 2-A to Plaintiff's Reply in Support of its Motion to Remand at p. 4.

Accordingly, upon resolution of Plaintiff's Motion to Remand, AISLIC intends to seek relief from this Court to stay or dismiss this lawsuit in favor of the New York arbitration.

EMOC attached the New York Order as evidence in support of its reply and incorrectly argued that the rulings set forth in the New York Order support Plaintiff's position on remand here.<sup>5</sup> Specifically, Plaintiff misstates the New York court's holding, claiming that "AISLIC's argument that Mobil is the actual plaintiff in this case has recently been rejected in a separate action filed by AISLIC against Mobil in New York."<sup>6</sup> To the contrary, in connection with the relationship between EMOC and Mobil, the New York court stated:

The Court has no idea whether respondent [Mobil] and ExxonMobil are playing fast and loose with corporate identities. But this is not the proper forum or application for this Court to explore the relationship between these entities or respondent's corporate status. There is no doubt that the Texas court can adequately consider those issues should petitioner insist that the respondent here is a necessary party in the Texas lawsuit and seek relief from the now-alleged "scrivener's error."<sup>7</sup>

The New York court clearly did not "reject" AISLIC's position that the "f/k/a" designation means that Mobil is the sole (and correct) party to the instant lawsuit. Instead, the New York court simply deferred to this Court without expressing a view as to whether Mobil and EMOC are "playing fast and loose" with their corporate identities in order to avoid diversity jurisdiction. That is precisely what EMOC and Mobil are doing.

As AISLIC set forth in its Response to Plaintiff's Motion to Remand, Plaintiff's Original Petition expressly asserts the rights of Mobil via the "f/k/a" designation because the AISLIC Policies require Mobil to bring all suits as the Named Insured. Accordingly, Mobil is the real

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<sup>5</sup> See Dkt. No. 15-2; Dkt. No. 14, pp. 6-7.

<sup>6</sup> See Dkt. No. 14, pp. 6-7.

<sup>7</sup> See Dkt. No. 15-2, App. 40.

party in interest, and this Court has diversity jurisdiction because Mobil's corporate citizenship is fully diverse from that of AISLIC.

**CONCLUSION**

For the reasons set forth above, and in its Response to Plaintiff's Motion to Remand, AISLIC respectfully requests the Court deny Plaintiff's Motion to Remand to State Court and retain jurisdiction because the real parties in interest are diverse.

Dated: October 27, 2022

Respectfully submitted,

**GRAY REED**

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**CERTIFICATE OF SERVICE**

On October 27, 2022, a true and correct copy of the foregoing document was forwarded to the following counsel of record in accordance with the Federal Rules of Civil Procedure:

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